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SUPREME COURT
STATE OF WASHINGTON
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NO. 84632-4

SUPREME COURT OF THE STATE OF WASHINGTON

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FIVE CORNERS FAMILY FARMERS, SCOTT COLLIN, THE
CENTER FOR ENVIRONMENTAL LAW AND POLICY
and SIERRA CLUB,

Appellants,

v.

STATE OF WASHINGTON, WASHINGTON DEPARTMENT OF
ECOLOGY; and EASTERDAY RANCHES, INC.,

Respondents,

and

WASHINGTON CATTLEMEN'S ASSOCIATION, COLUMBIA
SNAKE RIVER IRRIGATORS ASSOCIATION, WASHINGTON
STATE DAIRY FEDERATION, NORTHWEST DAIRY
ASSOCIATION, WASHINGTON CATTLE FEEDERS ASSOCIATION,
CATTLE PRODUCERS OF WASHINGTON, WASHINGTON STATE
SHEEP PRODUCERS and WASHINGTON FARM BUREAU,

Intervenor-Respondents.

APPELLANTS' STATEMENT OF GROUNDS FOR DIRECT REVIEW

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NATURE OF CASE AND DECISION

This is a case about water as a public resource and a fundamental question of law of first impression: a question regarding the scope of RCW 90.44.050 and the extent to which a statutory exception in a larger regulatory scheme can be exploited such that the exception consumes the larger regulatory requirements. Appellants seek direct review of this appeal by the Washington Supreme Court pursuant to RAP 4.2(a)(4).

Residents of Washington rely on streams, rivers, and aquifers to provide water for our homes and industries, to support agriculture, and to sustain native salmon runs and recreation. Today, as a result of increased population, changes in precipitation due to a warming climate, and different patterns of personal and commercial use, many watersheds in Washington are over-appropriated, and Ecology has limited or closed streams and basins across the State to new water rights. *See, e.g.*, WAC 173-522-050, 173-510-040, 173-532-040, 173-549-025.¹ In particular, aquifers in the Columbia Basin are reported to be in decline. *See, e.g.*, Declaration and attachments of John Osborn, M.D., dated November 10,

¹ While the Department of Ecology has not ordered closure, it has not issued new water rights in Franklin County for twenty years. Declaration of Scott J. Collin, ¶¶ 11 and 15, dated November 6, 2009, filed November 11, 2009, Franklin County Superior Court Docket No. 17 ("Docket"). Declarations and pleadings cited here will be part of Appellants' designated clerk's papers in accordance with RAP 9.6.

2009, filed November 11, 2009, Franklin County Docket No. 18. As this Court recognized, “[i]t is no secret that water availability is a crucial issue in this state, and will become even more so as time passes.” *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 18, 43 P.3d 4 (2002).

As early as 1917, the Washington Legislature regulated the state’s surface water to ensure an adequate water supply, fairly distributed and efficiently-used, for a growing population. RCW 90.03 *et seq.* In 1945, the legislature passed the Groundwater Code to similarly manage and regulate groundwater use in the state. The Groundwater Code provides that there shall be no withdrawal of groundwater, nor any well for withdrawal constructed, absent an application to and permit from the Department of Ecology (“Ecology”). RCW 90.44.050. Before a groundwater permit may be issued, Ecology must investigate and affirmatively find that (1) water is available, (2) for a beneficial use, and (3) an appropriation will not impair existing rights, or (4) be detrimental to the public welfare. RCW 90.03.290.

The Groundwater Code exempts certain limited uses, including stock-watering, from the permitting requirements. Specifically, RCW 90.44.050 provides:

any withdrawal of public ground waters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area,

or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW 90.44.052, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section....

RCW 90.44.050 further provides that Ecology may require the person making “any such small withdrawal” to furnish information regarding the withdrawal and that a party making the withdrawals not exceeding 5,000 gallons per day may apply for a permit under the same process as for nonexempt withdrawals.

For 60 years, the State of Washington, including members of the judiciary engaged in adjudicating water rights, interpreted the stock-water provision of RCW 90.44.050 as within the 5,000 gallons per day limitation. *See, e.g.*, the State’s position set forth in *DeVries v. Dep’t of Ecology*, PCHB 01-073 (2001). In *DeVries*, using historical documents, declarations of Ecology employees, and evidence of water rights adjudications, the State argued that the stock-water exemption language in RCW 90.44.050 was limited by the 5,000 gallons per day amount and that Ecology had a long history of applying the limitation to stockwater. *Id.*

In 2005, the Attorney General, in response to a request from four state legislators, changed that interpretation and issued an opinion that the unpermitted use of groundwater for livestock was not limited in quantity.

AGO 2005 No. 17.² Based upon this opinion, Ecology began allowing unpermitted groundwater use for watering livestock with no quantity limit.

Easterday Ranches, Inc. ("Easterday") has proposed a large (30,000 head) industrial cattle feeding operation in the Five Corners area of Franklin County. Estimates of the amount of water necessary for the drinking needs of the operation range from 450,000 to 600,000 gallons per day. Easterday claimed, and Ecology agreed, that it was exempt from the Groundwater Code's permit requirements.³ See Answers of Easterday ¶¶ 24-25 and State of Washington, ¶ 24, filed August 5, 2009 and August 3, 2009 respectively, Docket No. 1 (file from Thurston County Superior Court). As a result, Ecology has not conducted any analysis of whether up to 600,000 gallons per day for the exempt stock-water use is available, whether it will be put to beneficial use, whether it will impair existing water rights, or whether it will be detrimental to public welfare.

Appellants Five Corners Family Farmers and Scott Collin are family farmers living and working for generations in or near the Five

² <http://www.atg.wa.gov/AGOOpinions/opinion.aspx?section=archive&id=5872>.

³ 450,000-600,000 gallons per day is the amount necessary for drinking water at the Easterday operation, and the amount claimed exempt from permitting. Easterday has also purchased a water right, known as the Pepiot Transfer, for non-drinking water needs. The Pepiot Transfer is not at issue in this litigation.

Corners area, some on property immediately adjacent to, or across the road from, the Easterday operation. Each of them rely on a groundwater well for drinking, lawn, and garden uses. Some of them also make limited use of their wells for watering livestock. Each of their wells is the sole source of water for their homes and families. If their wells are appreciably diminished or go dry, they have no reasonable means to obtain water for their homes. *See, e.g.*, Collin's Declaration ¶ 13, Docket No. 17; Declaration of Randolph Jones ¶ 8, Docket No. 22; and Declaration of Sheila Poe ¶ 9, Docket No. 21. According to Ecology's limited understanding of groundwater in the area, some of the Family Farmers are in the same aquifer as Easterday's operation and Ecology treats all of the aquifers in the area as connected. Collin at ¶ 11 and Jones at ¶ 9.

Appellants commenced this case against Ecology and Easterday⁴ in June of 2009, seeking a declaratory judgment that the stockwater exemption from permit requirements in RCW 90.44.050 is not unlimited in quantity. Appellants argued that contrary to a recent Attorney General Opinion, the legislature never intended the use of groundwater for

⁴ Shortly after the case commenced, a number of state-wide agricultural associations were allowed to intervene as defendants by stipulation of the original parties. The intervenor defendants are members of the dairy, cattle, and sheep industries, the Farm Bureau, and Columbia Snake River Irrigators' Association. Nine federally-recognized Indian Tribes later sought participation in the case as *amicus curiae*.

livestock to be unlimited in quantity, but rather, that it should be part of a bundle of uses limited in quantity to 5,000 gallons per day. Appellants also argued that the legislature never intended the stockwater permit exemption to be utilized by large, industrial feedlot operations.

As demonstrated by the intervenors, the exempt well-livestock issue is not isolated to either Easterday or Franklin County. Animal operations around the state apparently make use of unlimited amounts of groundwater without permits, from Grays Harbor County to Lewis County to Snohomish County to Yakima County to Whitman County. *See, e.g.*, Declarations of Gordon, Mael, Werkhoven, Groeneweg, Jenkins, and Swannack, Docket Nos. 85, 83, 84, 81, 80, and 82, respectively.

This case came before the Honorable Carrie Runge, Franklin County Superior Court, on Cross-Motions for Summary Judgment on April 2, 2010. On May 5, 2010, Judge Runge issued her final Order on Cross-Motions for Summary Judgment:

- denying Easterday and intervenor Columbia Snake River Irrigators Association's Motion to Dismiss for Lack of Standing;
- granting Defendants' Motions for Summary Judgment finding that the language of the statute is unambiguous and plain and that permit-exempt withdrawals of groundwater for stock-watering purposes are not limited to any quantity;

- granting the Intervenor Agricultural Associations' Motion for Summary Judgment that Plaintiffs are not entitled to an injunction requiring the State of Washington to enforce the provisions of RCW 90.44.050 as being limited to 5,000 gallons per day or any other specific quantity of water; and
- denying Plaintiffs' Motion for Summary Judgment in its entirety.

Order on Cross-Motions for Summary Judgment, the Honorable Carrie Runge, May 5, 2010.⁵ Appellants appealed the Franklin County Superior Court's decision on May 27, 2010.⁶

ISSUES PRESENTED FOR REVIEW

- I. DID THE SUPERIOR COURT ERR IN FINDING THAT THE PLAIN LANGUAGE OF RCW 90.44.050 ALLOWS PERMIT-EXEMPT WITHDRAWALS OF GROUNDWATER FOR STOCK-WATERING, UNLIMITED IN QUANTITY?
 - A. The Plain Language of RCW 90.44.050, the Groundwater Code, and Water Laws Generally Demonstrates the Intent of the Washington Legislature to Limit All Exempt Uses of Groundwater to 5,000 Gallons Per Day or Less.

When a court is called upon to interpret a statute, the court's primary objective is to carry out the intent of the legislature. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). If the statute's meaning is plain, the court's inquiry ends there. *Id.* Under

⁵ Order attached as Appendix A.

⁶ Notice of Appeal attached as Appendix B.

Washington law, in discerning a statute's plain meaning, a court is to look not just to the specific section or sentence in question, but also to all related statutes or other provisions of the same act in which the provision is found, as well as the purpose of the act; "[m]eaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Id.* at 11-12; *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007).

In passing the Groundwater Code, the Legislature intended to manage and regulate the use of groundwater through permitting in order to conserve this finite resource. It did not intend to allow unlimited use, exempt from such regulation, for the industrial watering of livestock. The plain language of RCW 90.44.050, read in its entirety, and with the overall purpose and scheme of the Groundwater Code, shows that the exemption from permitting for watering livestock is not, and was never intended by the Legislature to be, unlimited in amount. The intent to regulate and carefully control the use of groundwater is further demonstrated by various provisions throughout the state's water laws.

Including stockwater as one of a bundle of uses limited to 5,000 gallons per day comports with principles of statutory interpretation and reasonable, coherent application of the law. The interpretation of RCW 90.44.050 that is most consistent with the provisos at the end of RCW

90.44.050, the language of the Groundwater Code, the plain legislative intent to regulate and conserve groundwater resources, and reasonable application of the stockwater permit exemption relative to the other exemptions and water rights generally, is one that provides for two basic categories of water use: (1) domestic use that includes livestock for a household or homestead, a lawn, a vegetable garden for the household or homestead, and household uses such as drinking, cleaning and sanitation; and (2) small commercial or industrial uses. Each of the two categories is exempt from the need to obtain a permit as long as the total use under each category is "small," remaining at or below 5,000 gallons per day.

Contrary to the ruling of the Franklin County Superior Court and contrary to current interpretation and application by the State of Washington, RCW 90.44.050 does not provide for the unlimited, unpermitted use of groundwater by industrial livestock operations. It would make no sense for the legislature to allow an *unlimited in quantity* stock-water exemption that would essentially swallow all other requirements whole. Indeed, the Supreme Court recognized as much in the *Campbell & Gwinn* decision when it found that the legislature clearly did not intend unlimited exempt uses, wholly unregulated, when the overall goal of the Groundwater Code was to assure protection of existing rights, the public interest, and of the resource as a whole. *Campbell &*

Gwinn, 146 Wn.2d at 16. “The role of this court is to preserve the general requirement of permitting, as the Legislature obviously intended.” *Id.* at 17.

Reading the statute and the water laws as a whole, giving effect to all of its provisions, and avoiding an absurd result, requires the stock-water exemption from permitting to be limited to a “small withdrawal” of no more than 5,000 gallons per day.

B. The Legislative History of RCW 90.44.050, Including the Historical Context and 60 Years of Application by the State and Judiciary, Further Demonstrates and Supports an Interpretation That Limits Unpermitted Uses of Groundwater for Watering Livestock to Small Amounts.

For 60 years, Ecology agreed with the interpretation of RCW 90.44.050 that included permit-exempt use of groundwater for livestock as part of the bundle of domestic uses limited to 5,000 gallons per day or less. Ecology’s only affirmative argument for its switch in 2005 centers on the placement of a comma and application of the doctrine of the last antecedent. This doctrine is applied sparingly and only when the meaning of a statute is ambiguous. *In re Smith*, 139 Wn.2d 199, 204-05, 986 P.2d 131 (1999). It is reasonable to conclude that RCW 90.44.050 is ambiguous given Ecology’s recent switch in interpretation and its vigorous defense of both interpretations within a five-year period.

If a statute is ambiguous, a court may look to legislative history to

glean legislative intent, *Campbell & Gwinn*, 146 Wn.2d at 12, which history includes the circumstances leading up to and surrounding the statute's enactment. *Restaurant Dev., Inc. v. Cannanwill*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003) (citations omitted). Historical context includes background facts, such as from reports or newspaper accounts, of which judicial notice can be taken because presumably the legislature was familiar with them when it passed the statute. *Campbell & Gwinn*, 146 Wn.2d at 11 (quoting 2A Norman J. Singer, *Statutes and Statutory Construction* § 48A:16 at 809-10 (6th ed. 2000)).

The historical context for the Groundwater Code supports limiting the quantity of permit-exempt water that can be used for watering livestock. Various government reports regarding rural water use available to the legislature in 1945, the mirror language between those reports and the permitting exemption in RCW 90.44.050, and the contemporaneous and long-term interpretation of the law by the government agencies tasked with administering it all demonstrate the legislature's intent that the permitting exemption be limited to 5,000 gallons per day, including for the watering of livestock.

The state's rigid application of the doctrine of the last antecedent is Respondents' only affirmative argument for unlimited permit-exempt water use. Yet courts refuse to apply the principle when to do so is

contrary to the overall intent of the legislature or where it would lead to untenable results. *Clark County Public Utility Dist. No. 1 v. Washington Dep't of Revenue*, 153 Wash. App. 737, 222 P.3d 1232, 1239 (Wash. App. Div. 2, 2009); *In re Smith*, 139 Wn.2d 199, 204-05, 986 P.2d 131 (1999). See also *Nobelman v. American Sav. Bank*, 508 U.S. 324, 330-31, 113 S. Ct. 2106, 2111 (1993). Strict adherence to application of the doctrine here is contrary to legislative intent and leads to absurd results.

C. The Superior Court Also Erred in Finding That the Plain Language of RCW 90.44.050 Allows Permit-Exempt Withdrawals of Groundwater for Stock-Watering in an Amount Unlimited in Quantity and Regardless of the Size and/or Industrial Nature of the Livestock Operation.

The stock-water exemption was intended to be one of a bundle of uses necessary to sustain an average rural household. It was never intended (nor did the Legislature contemplate) its use for large industrial operations like a 30,000 head cattle feedlot. The Easterday operation, as an industrial operation, is not entitled to utilize the exemption.

The Legislature clearly set forth parallel 5,000 gallons per day limits on permit-exempt domestic uses—including stockwater, and on permit-exempt small industrial uses. Given that, it is apparent that the Legislature intended to limit all permit-exempt uses to 5,000 gallons per day, whether the use was considered industrial or domestic. Other large uses of water, such as irrigation for crop agriculture, are clearly *not*

exempt from the permitting requirements of the Groundwater Code, further demonstrating the Legislature's intent that large-scale, commercial-level agriculture should be regulated through a permitting system. The Legislature has also expressly disfavored unregulated water use by large feedlots in another water policy statute. RCW 90.22.040.

Moreover, the historical context for RCW 90.44.050 supports an interpretation limiting the stock-water exemption to household or non-industrial levels of use. Government reports at the time provided for approximately 283 total animals on a standard farm. This Court has noted that it will not interpret a statute contrary to what the legislature contemplated simply because of increases in the size of modern water use, *Campbell & Gwinn*, 146 Wn.2d at 16-17, and that agencies and courts may not read a statute in a way the enacting legislature never anticipated.⁷

GROUND'S FOR DIRECT REVIEW

Water supply and regulation almost always implicate issues of broad importance to the public, and in this case, the significant water issues also involve agricultural practices, one of Washington's largest

⁷ While the Superior Court also ruled that appellants are not entitled to injunctive relief, it is clear that the court did so because the request was moot given the court's ruling on the merits. Therefore, Appellants do not argue here regarding their entitlement to such relief under the Uniform Declaratory Judgment Act should they ultimately obtain a favorable ruling on the merits. However, Appellants do not waive or intend to waive their right to challenge the Superior Court's ruling in this regard, on appeal.

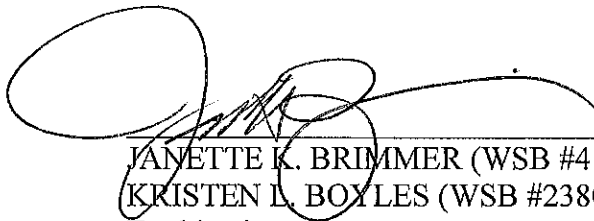
industries. The legislature recognized these fundamental issues of broad import by emphasizing that all waters within the state belong to the public, subject to existing rights. RCW 90.03.010; *see also* RCW 90.03.005 (state public waters policy promotes both diversionary uses and in-stream natural values and rights) and RCW 90.44.050 (generally requiring permits for all withdrawals of groundwater). Indeed, this Court has granted direct review in a number of water cases, including *Dep't of Ecology v. Theodoratus*, 135 Wn.2d 582, 957 P.2d 1241 (1998) and *Lummi Nation et al. v. State of Washington*, Consol. Case No. 81809-06 (pending). The statutory interpretation at issue here concerns a state-wide exemption from groundwater permitting requirements affecting animal agriculture and other water users in the same watersheds and aquifers, in all areas of the state. Whether the law allows permit-exempt withdrawals of groundwater in unlimited quantities for livestock raises fundamental and urgent issues of public importance that deserve direct review and prompt and ultimate resolution as parties' homes and livelihoods are affected by the recently-changed interpretations of the state law. Further, as is evident from the motions to intervene, this case is of great interest to the state's agricultural community.

There are thousands of users of exempt wells in the state drawing millions of gallons of water daily. Currently, none of those wells are

subject to the permitting process, and none have been examined for potential impairment to senior water rights, none have been examined for sustainability, and none have been examined for whether the amount and type of use is in the public interest. Therefore, the issue affects Washington citizens and agriculture state-wide. To the extent that some of the agricultural intervenors have suggested that they will be unable to obtain water permits if required to do so due to the scarcity and resulting expense of water rights and permits, the agricultural intervenors emphasize the very heart of the problem and the need for regulation of uses of groundwater. *See, e.g.,* Edwards at ¶ 6; Swannack at ¶ 6; Gordon at ¶ 3; Mauel at ¶ 6. If water is not available or in short supply, allowing unlimited use will obviously cause or exacerbate the very problem the Groundwater Code was meant to address in 1945. This situation will only worsen with increased populations and the effects of climate change.

Moving this case quickly to resolution will help avoid more people or operations relying on a faulty interpretation of law, creating more unregulated competition for a scarce public resource. Appellants request that the Supreme Court accept this case for direct review.

Respectfully submitted this 9th day of June, 2010.

A large, stylized handwritten signature in black ink, appearing to read 'Janette K. Brimmer', is written over a horizontal line.

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APPENDIX A

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MICHAEL J. KILLIAN

BY DEPUTY

STATE OF WASHINGTON
FRANKLIN COUNTY SUPERIOR COURT

FIVE CORNERS FAMILY FARMERS,
SCOTT COLLIN, THE CENTER FOR
ENVIRONMENTAL LAW AND POLICY,
and SIERRA CLUB,

Plaintiffs,

v.

STATE OF WASHINGTON,
WASHINGTON STATE DEPARTMENT
OF ECOLOGY, and EASTERDAY
RANCHES, INC.,

Defendants,

and

WASHINGTON CATTLEMEN'S
ASSOCIATION, COLUMBIA SNAKE
RIVER IRRIGATORS ASSOCIATION,
WASHINGTON STATE DAIRY
FEDERATION, NORTHWEST DAIRY
ASSOCIATION, WASHINGTON CATTLE
FEEDERS ASSOCIATION, CATTLE
PRODUCERS OF WASHINGTON,
WASHINGTON STATE SHEEP
PRODUCERS and WASHINGTON FARM
BUREAU,

Intervenors/Defendants.

NO. 09-2-51185-6

ORDER ON CROSS-MOTIONS FOR
SUMMARY JUDGMENT

COPY

THIS MATTER having come on regularly for hearing on April 2, 2010 on cross-motions
for summary judgment, Plaintiffs, Five Corners Family Farmers, Scott Collin, The Center for

Environmental Law and Policy and Sierra Club, appearing by and through their counsel of record, Janette K. Brimmer, Kristen L. Boyles and Earthjustice; Defendants, the State of Washington and Washington State Department of Ecology (hereinafter referred to collectively as the "State Defendants") appearing by the Attorney General Robert M. McKenna, through Assistant Attorney General, Maia D. Bellon; Defendant Easterday Ranches, Inc., (hereinafter referred to as "Easterday Ranches") appearing by and through its counsel of record, William L. Cameron, Lee Smart P.S., Inc. and R. Crane Bergdahl; the Intervenor Washington State Dairy Federation; Northwest Dairy Association, Washington Cattle Feeders Association, Cattle Producers of Washington, Washington State Sheep Producers and Washington Farm Bureau (hereinafter referred to collectively as the "Agricultural Associations"), appearing by and through their counsel of record, Jeff Slothower of Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.; the Intervenor Washington Cattlemen's Association, appearing by and through its counsel, Gregory McElroy and McElroy Law Firm, PLLC; and the Intervenor Columbia Snake River Irrigators Association, appearing by and through its counsel, James Buchal and Murphy & Buchal LLP, and the Court having reviewed the records and files herein, including but not limited to the following pleadings:

Date Filed	Description
10/27/2009	Easterday's Motion to Dismiss
10/27/2009	Easterday's Memorandum in Support of Motion to Dismiss
10/27/2009	Declaration of William L. Cameron
11/12/2009	Plaintiffs' Response in Opposition to Motion to Dismiss
11/12/2009	Declaration of Scott J. Collin
11/12/2009	Declaration of John Osborn, M.D.
11/12/2009	Declaration of Janette K. Brimmer
11/12/2009	Declaration of Patricia A. Sumption
11/12/2009	Declaration of Sheila R. Poe
11/12/2009	Declaration of Randolph Allen Jones
11/19/2009	Defendant Easterday Ranches' Reply Memorandum in Support of Motion to Dismiss
11/20/2009	Easterday Ranches' Motion to Strike Declarations
11/20/2009	Plaintiffs' Opposition to Motion to Strike
12/04/2009	Order Denying Motion to Dismiss and Motion to Strike
01/22/2010	Plaintiffs' Notice of Motion and Motion for Summary Judgment
01/22/2010	Plaintiffs' Memorandum in Support of Motion for Summary Judgment
01/22/2010	Declaration of Janette K. Brimmer
02/18/2010	Easterday's Motion to Strike Declarations
02/18/2010	Defendant Easterday Ranches' Motion for Summary Judgment

	Date Filed	Description
1	02/18/2010	Memorandum in Support of Easterday's Motion for Summary
2		Judgment and in Response to Five Corners' Motion for Summary
3	02/19/2010	Judgment
4	02/19/2010	State of Washington's Note for Cross Motion and Cross Motion for
5		Summary Judgment
6	02/19/2010	State Defendants' Memorandum in Support of Cross Motion for
7		Summary Judgment and Response to Plaintiffs' Motion for Summary
8	02/19/2010	Judgment
9	02/19/2010	Declaration of Maia Bellon in Support of State Defendants' Cross
10		Motion for Summary Judgment and Response to Plaintiffs' Motion for
11	02/19/2010	Summary Judgment
12	02/19/2010	Intervenor Washington Cattlemen's Association Memorandum in
13		Opposition to Plaintiffs' Motion for Summary Judgment
14	02/19/2010	Declaration of John William Field in Opposition to Plaintiffs' Motion
15		for Summary Judgment
16	02/19/2010	Intervenor The Columbia Snake River Irrigators Association's
17		Memorandum in Opposition to Plaintiffs' Motion for Summary
18	02/19/2010	Judgment and in Support of Easterday Ranches' Cross-Motion for
19		Summary Judgment and Renewed Motion to Strike
20	02/19/2010	Declaration of Darryll Olsen, Ph.D. in Opposition to Plaintiffs'
21		Motion for Summary Judgment and in Support of Easterday Ranches'
22	02/19/2010	Cross-Motion for Summary Judgment
23	02/19/2010	Agricultural Association: Intervenor's Cross-Motion for Summary
24		Judgment
25	02/19/2010	Agricultural Association: Intervenor's Memorandum of Law in
26		Support of Agricultural Associations' Cross-Motion for Summary
		Judgment and in Response to Plaintiffs' Motion for Summary
		Judgment
	02/19/2010	Declaration of Jeff Slothower in Support of Agricultural Associations'
		Cross-Motion for Summary Judgment and Response to Plaintiffs'
		Motion for Summary Judgment
	02/19/2010	Declaration of Chris Cheney
	02/19/2010	Declaration of Gloria Edwards
	02/19/2010	Declaration of Don Floren
	02/19/2010	Declaration of Gene Jenkins
	02/19/2010	Declaration of Jim Werkhoven
	02/19/2010	Declaration of Art Swannack
	02/19/2010	Declaration of Ron Mauel
	02/19/2010	Declaration of Art Groeneweg
	02/19/2010	Declaration of Jay Gordon
	02/19/2010	Declaration of Jeff Slothower in Support of Filing Electronically
		Transmitted Signatures
	03/01/2010	Joint Tribal Motion for Leave to Participate as <i>Amicus Curiae</i>
	03/01/2010	Joint Tribal <i>Amicus Curiae</i> Brief
	03/01/2010	Order on Motion for Leave to Participate as <i>Amicus Curiae</i>
		[Proposed]
	03/08/2010	Plaintiffs' Response to Motion for Leave to Participate as <i>Amicus</i>
		<i>Curiae</i>
	03/09/2010	Mail Returned Unclaimed

1	Date Filed	Description
2	03/17/2010	Plaintiffs' Combined Reply Memorandum in Support of Summary Judgment and in Opposition to Motions for Summary Judgment and/or to Dismiss by Defendants and Defendant/Intervenors
3	03/17/2010	Declaration of Rachael P. Osborn
4	03/17/2010	Second Declaration of Janette K. Brimmer
5	03/29/2010	Agricultural Associations' Reply in Support of Their Cross-Motion for Summary Judgment
6	03/29/2010	Declaration of Jeff Slothower in Support of Agricultural Associations' Reply in Support of Their Cross-Motion for Summary Judgment
7	03/29/2010	Agricultural Associations' Response to Tribes' Motion to File an <i>Amicus Curiae</i> Brief
8	03/29/2010	Intervenor The Columbia Snake River Irrigators Association's Reply Memorandum in Support of Easterday Ranches' Cross-Motion for Summary Judgment and Renewed Motion to Strike
9	03/29/2010	Intervenor The Columbia Snake River Irrigators Association's Response to Joint Tribal Motion to Participate as <i>Amicus Curiae</i>
10	03/29/2010	Declaration of James L. Buchal in Support of Intervenor The Columbia Snake River Irrigators Association's (1) Response to Joint Tribal Motion to Participate as <i>Amicus Curiae</i> and (2) Reply in Support of Defendant Easterday Ranches' Cross-Motion for Summary Judgment
11	03/29/2010	State Defendants' Reply to Plaintiffs' Combined Reply Memorandum in Support of Summary Judgment and in Opposition to Motions for Summary Judgment and/or to Dismiss by Defendants and Defendant/Intervenors
12	03/29/2010	Declaration of Maia Bellon in Support of State Defendants' Reply to Plaintiffs' Combined Reply Memorandum
13	03/29/2010	Easterday Ranches' Reply Memorandum
14	03/29/2010	Easterday's Memorandum in Opposition to Joint Tribal Motion to Appear as <i>Amicus Curiae</i>
15	03/30/2010	State Defendants' Response to Joint Tribal <i>Amicus Curiae</i> Brief
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17		

18 and the Court having heard the oral argument of counsel on April 2, 2010 and the Court being
19 otherwise advised on the premises,

20 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 21 1. As to Defendant, Easterday Ranches, Inc.'s motion for summary judgment, the
22 Court concludes that there are genuine issues of material fact as to Defendant Easterday Ranches'
23 motion for summary judgment on standing and therefore denies the motion on standing; and
- 24 2. The Court denies Defendant Easterday Ranches' motion to strike; and
- 25 3. As to Easterday Ranches' motion for summary judgment as to the interpretation of
26 RCW 90.44.050, and the State Defendants' motion for summary judgment and the Agricultural

1 Associations' motion for summary judgment, the Court grants these motions and declares that there
2 are no genuine issues of material fact and, as a matter of law, RCW 90.44.050 is unambiguous and
3 the plain meaning of RCW 90.44.050 is that permit-exempt withdrawals of public groundwater for
4 stock-watering purposes are not limited to any quantity; and

5 4. As to the Agricultural Associations' motion for summary judgment on the issue of
6 Plaintiffs' requested injunctive relief as against the State Defendants, the Court grants this motion
7 and declares that there are no genuine issues of material fact and, as a matter of law, Plaintiffs are
8 not entitled to an injunction requiring the State Defendants to enforce the stock-water permit
9 exemption contained within RCW 90.44.050 as being limited to 5,000 gallons per day or any other
10 quantity of water; and

11 5. The Plaintiffs' motion for summary judgment is denied in its entirety.

12 6. The Court finds that this Order is a final judgment, disposes of all claims and
13 causes of action asserted in the pleadings, is final for purposes of appeal, and there is no just reason
14 for delay.

15 DONE IN OPEN COURT this 5 day of May, 2010.

16
17 Carrie Runge
18 Judge Carrie L. Runge
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26

1 Presented by:

2 ROBERT M. MCKENNA

Attorney General

3

4


Maia D. Bellon, WSBA # 24777

5 Assistant Attorney General

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Washington State Department of Ecology

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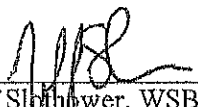
8

9 LATHROP, WINBAUER, HARREL,

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11


Jeff Slothower, WSBA #14526

12 Attorney for Washington State Dairy

Federation, Northwest Dairy Association,

13 Washington Cattle Feeders Association, Cattle

Producers of Washington, Washington State

14 Sheep Producers, Washington Farm Bureau,

together the "Agricultural Association

Intervenors"

15 (509) 925-6916

16

17 Agreed as to Form

Notice of Presentation Waived:

18 EARTHJUSTICE

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19

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Kristen L. Boyles, WSBA No. 23806

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APPENDIX B

1 ☐ EXPEDITE (if filing within 5 court days of hearing)

2 ☐ Hearing is set:

3 Date:

4 Time:

5 Judge:

COPY
ORIGINAL FILED

MAY 28 2010

MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK

6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 IN AND FOR THE COUNTY OF FRANKLIN

8 FIVE CORNERS FAMILY FARMERS, SCOTT)
9 COLLIN, THE CENTER FOR ENVIRONMENTAL)
10 LAW AND POLICY, and SIERRA CLUB,)

11 Plaintiffs,)

12 vs.)

13 STATE OF WASHINGTON, WASHINGTON)
14 DEPARTMENT OF ECOLOGY, and EASTERDAY)
15 RANCHES, INC.,)

16 Defendants,)

17 and)

18 WASHINGTON CATTLEMEN'S ASSOCIATION,)
19 COLUMBIA SNAKE RIVER IRRIGATORS)
20 ASSOCIATION, WASHINGTON STATE DAIRY)
21 FEDERATION, NORTHWEST DAIRY)
22 ASSOCIATION, WASHINGTON CATTLE)
23 FEEDERS ASSOCIATION, CATTLE PRODUCERS)
24 OF WASHINGTON, WASHINGTON STATE SHEEP)
25 PRODUCERS and WASHINGTON FARM BUREAU,)

26 Intervenor-Defendants.)

NO. 09-2-51185-6

NOTICE OF APPEAL TO
WASHINGTON SUPREME
COURT

Pursuant to RAP 4.2, 5.1, and 5.2(f), plaintiffs Scott Collin, Five Corners Family

Farmers, The Center for Environmental Law and Policy, and Sierra Club hereby appeal and seek

direct review by the Washington Supreme Court of the Order on Cross Motions for Summary

Judgment entered on May 5, 2010.

NOTICE OF APPEAL TO WASHINGTON
SUPREME COURT (No. 09-2-51185-6) - 1 -

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(206) 343-7340

1 A copy of the Order is attached to this notice.

2 The name and address of the attorneys for each of the parties in this case are below.

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Co-Counsel for the Amicus Curiae Lummi Nation

16
17 DATED this 27th day of May, 2010.

18 
19 JANETTE K. BRIMMER (WSB #41271)
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